

RESOLUTION 23-102

A RESOLUTION OF THE CITY OF WESTFIELD DECLARING INTEREST IN AND AUTHORIZING OFFER, BIDDER CONTRACT, AND POTENTIAL PURCHASE OF CERTAIN REAL PROPERTY

WHEREAS, the City of Westfield, (“City”) is a duly formed municipal corporation within the State of Indiana, governed by its duly elected Mayor and Common Council (“Council”);

WHEREAS, the City has identified real estate and certain improvements generally located at 2510 E 171st Street, Westfield, IN. 46074 (“Real Estate”), and it has an interest to purchase the Real Estate at a public auction, to be held on January 26, 2023;

WHEREAS, the Real Estate is being auctioned by DSA Auctions (“Auctioneer”) under general terms established by a “Real Estate Bidder Contract” that outlines terms of the auction (“Bidder Contract”), attached here as **Exhibit A**;

WHEREAS, the Council has determined that there are sufficient funds to use for the purchase of the Real Estate, which Real Estate will be useful for certain projects the City wishes to undertake for the benefit of its citizens; and

WHEREAS, the Council wishes to authorize the City’s Chief of Staff, Jeremy Lollar, or his designee as the purchasing agent under Ind. Code § 36-1-10.5 *et. seq.* to take all appropriate action under Indiana law, and consistent with all applicable rules and regulations, to purchase the Real Estate in an amount not to exceed the average of two qualifying appraisals under Indiana law that have been ordered.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of Westfield, Hamilton County, Indiana, that:

Section 1. The foregoing Recitals are fully incorporated here by reference.

Section 2. The Chief of Staff or his designee is authorized as a purchasing agent for purchase of the Real Estate and directed to purchase the Real Estate for the lowest price possible at the January 26, 2023 auction, not to exceed the average of two appraisals. An offer made at the January 26, 2023 auction at an amount greater than the average of two appraisals is considered an unauthorized offer, and therefore invalid.

Section 3. The Chief of Staff shall present this executed Resolution to the Auctioneer at or before the January 26, 2023 auction.

Section 4. This Resolution shall be in full force and effect upon passage.

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PASSED THIS ____ DAY OF JANUARY 2023 BY THE WESTFIELD COMMON COUNCIL, HAMILTON COUNTY, INDIANA.

WESTFIELD CITY COUNCIL

<u>Voting For</u>	<u>Voting Against</u>	<u>Abstain</u>
_____ Scott Willis	_____ Scott Willis	_____ Scott Willis
_____ Jake Gilbert	_____ Jake Gilbert	_____ Jake Gilbert
_____ Joe Edwards	_____ Joe Edwards	_____ Joe Edwards
_____ Scott Frei	_____ Scott Frei	_____ Scott Frei
_____ Mike Johns	_____ Mike Johns	_____ Mike Johns
_____ Troy Patton	_____ Troy Patton	_____ Troy Patton
_____ Cindy L. Spoljaric	_____ Cindy L. Spoljaric	_____ Cindy L. Spoljaric

ATTEST:

Cindy Gossard, Clerk-Treasurer

I hereby certify that RESOLUTION 23-_____ was delivered to the Mayor of Westfield
on the _____ day of _____, 2023, at _____ m.

Cindy Gossard, Clerk-Treasurer

I hereby APPROVE RESOLUTION 23-_____. I hereby VETO RESOLUTION 23-_____.
this _____ day of _____, 2023. this _____ day of _____, 2023.

J. Andrew Cook, Mayor

J. Andrew Cook, Mayor

This document was prepared by Manny Herceg, Taft Stettinius & Hollister LLP. I have taken all reasonable care to
redact each social security number in this document, if any. /s/ Manny Herceg

Exhibit A

REAL ESTATE BIDDER CONTRACT

AUCTION DATE: 1-26-2023

REAL ESTATE ADDRESS: 2510 E 171st Street, Westfield, IN 46074 ("Real Estate")

PARCEL NUMBER: See Bidder Packet for Full Detail

Bidder agrees to the following:

1. In addition to qualified bidders, any third party with a security interest in the Real Estate retains the right to bid at the auction.
2. Seller has the ability to close this transaction on auction day if PAID IN FULL on auction day.
3. This sale is not contingent upon the ability of the Bidder to secure financing, sell another property or any contingencies whatsoever.
4. Bidder expressly warrants the purchase is being made in AS IS CONDITION and solely based upon Bidder's examination of the Real Estate, and without any expressed or implied warranties of the company conducting the auction or any of its agents or employees (collectively, the "Auction Company") or the seller of the Real Estate (the "Seller"). The Real Estate is sold, and the Bidder agrees to accept the Real Estate in its present condition, **AS IS AND WHERE IS WITH ALL PLUSES AND MINUSES AND SUBJECT TO ALL, ANY AND ALL EASEMENTS, HIGHWAYS, RIGHT-OF-WAY, COVENANTS, CONDITIONS, RESTRICTIONS AND OTHER MATTERS OF RECORD AND THERE SHALL BE NO CONTINGENCIES OF ANY KIND.** Seller is not responsible for any removal of any tenants or other occupants of the Real Estate, trash, scrap, furniture, fixtures, chemicals or any other personal property and will become property of the Bidder. Bidder acknowledges the opportunity was afforded for physical, environmental, lead, radon or other inspections prior to execution of the auction and hereby waives any further right to additional inspections. No warranties as to physical condition, environmental condition, habitability, suitability to particular purpose, tenancies, or compliance with any laws, codes or ordinances, including those relating to water supplies and septic systems ("Deficiencies") are made by the Seller, unless specifically stated herein.
5. The Auction Company will not be held to answer claims whatsoever concerning the condition and/or title of these properties.
6. Any inspections previously made by Bidder or his/her/their representatives were done at Bidder's expense and for his/her/their information only. Cost and responsibility for curing Deficiencies, if any, is the Bidder's, and the correction and cure of any Deficiencies shall not be a condition of this sale or in any way affect Bidder's obligations under this Bidder Contract.
7. Bidder is responsible to pay all real estate taxes commencing with what was assessed in 2022 and is due and payable in May of 2023. Installments for local improvements not due and payable at the time of auction shall be paid by Bidder as they become due thereafter. Bidder should not rely solely on past property taxes as a guide to future property assessments and taxes as Indiana property tax laws have been subject to significant change in the recent past.
8. Bidder understands and agrees that a 10% Buyer's Premium will be charged by the Auction Company at this auction.
9. The Auction Company was retained by the Seller and has functioned throughout the transaction as an agent for the Seller exclusively. I.C. 25-34.1-10-9.5, as amended, provides that the Licensee (Auction Company)



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has an agency relationship with, and represents the interests of the Seller as Seller's agent to sell the Real Estate. Auction Company owes duties of trust, loyalty, confidentiality, accounting and disclosure to the Seller. However, Auction Company must deal honestly with bidders and disclose certain information to the bidders about the Real Estate. All representations made by Auction Company about the Real Estate are made as the agent of the Seller.

10. In the event of any litigation arising out of this sale or any breach thereof, Seller and the Auction Company shall be entitled to reasonable attorney fees, paralegal fees and all costs of litigation.
11. Bidder acknowledges that the auction and auction site may pose obvious, hidden, and unknown dangers, defects, and other perils. Bidder agrees to assume the risk of all injury, loss, and/or death from any cause whatsoever, and to indemnify Auction Company and Seller and hold them harmless for any injury, death, or other damage to person or property while attending the auction or at the auction site.
12. This Bidder Contract will be governed by, and construed in accordance with, the laws of State of Indiana.
13. The sale is permitted pursuant to an order entered in the Estate of Edna D. Newby, under Cause No. 29D01-2108-ES-000367, as well as an order entered in a pending bankruptcy in the Southern District of Indiana, under Case No. 21-00923-RLM-7.
14. By accepting these terms, Bidder agrees these terms will supersede all prior discussions, negotiations and agreements, whether oral or written except for the auction terms. Bidder agrees his/her actions shall be binding and obligatory upon the undersigned, their separate heirs, administrators, executors, assigns and successors in interest of the undersigned. Bidder may not assign the rights afforded the Bidder to any other party without the Seller's consent.
15. ALL ANNOUNCEMENTS MADE THE DAY OF THE SALE TAKE PRECEDENCE OVER ANY PRINTED MATERIAL
16. No amendment, alterations or withdrawal of this Bidder Contract shall be valid or binding unless made in writing and signed by both Seller and Bidder.
17. If I am the successful bidder, I agree to immediately execute all legal documents necessary for this transaction in accordance with all disclosed terms at the end of the auction.
18. The description of the Real Estate appearing in advertising prior to the auction is believed to be correct. Nevertheless, neither those descriptions nor any oral statements made by Owner, its officers, agents and employees of Auctioneer concerning the Real Estate shall be construed as a warranty, either or implied. THE REAL ESTATE IS SOLD AS IS – WHERE IS. The Bidder having examined the Real Estate accepts it the way it is and by execution hereinbelow, waives and disclaims any express or implied warranties.
19. The Auction Company shall reserve the right to enforce its terms of this Bidder Contract and require the successful Bidder to honor this commitment and agreement herein and shall have all rights to any and all legal and equitable remedies therewith, including, but not limited to costs of collection, reasonable attorney fees and court costs.
20. If a dispute arises between two or more Bidders, the Auction Company reserves the right to reopen bidding. The Auction Company's designation of a Buyer shall be final.
21. Bidder acknowledges responsibility for any personal injury or property damage caused by Bidder or its agent and further agrees to hold Auctioneer, Owners, its officers or employees harmless for any personal injury to himself or his agents and any property damage incurred on auction premises.



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22. The failure of any party hereto to enforce any provision of this Bidder Contract shall not be considered to be a waiver of such or any other provision, nor in any way to affect the validity of all or any part of this Bidder Contract or the right of such party thereafter to enforce each and every such provision. No waiver or any breach of this Bidder Contract shall be held to constitute a waiver of any other or subsequent breach.
23. In addition to executing this bidder contract, the bidder must provide a resolution document stating authority to purchase the property.
Bidder Initials: _____

TO BE COMPLETED BY BIDDER(S):

I, _____, acknowledge that I have received, understand and agree to be bound by the Terms of Sale for Real Property to be sold at auction.

_____ BIDDER'S SIGNATURE	_____ DATE	_____ BIDDER'S SIGNATURE	_____ DATE
_____ PRINTED		_____ PRINTED	
_____ COMPANY NAME IF APPLICABLE		_____ POSITION WITH COMPANY	
_____ STREET ADDRESS			
_____ CITY, STATE AND ZIP CODE			
_____ PHONE		_____ CELL PHONE	
_____ EMAIL ADDRESS			



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